

I now give my answers to the six issues, based on the evidence and my finding of fact:

- (1) The document purporting to be a sale and purchase agreement relating to Lot 736 held under E.M.R. 1406, Mukim of Linggi, Port Dickson, was not executed freely and voluntarily by the plaintiff.
- (2) Yes.
- (3) The agreement must be rescinded.
- (4) The plaintiff did not give the option.
- (5) No.
- (6) No.

I now come to the question of damages which the plaintiff is entitled to receive arising from the defendant's fraudulent misrepresentation (see *Doyle v. Olby (Ironmongers) Ltd.*⁽³⁾). The plaintiff did not plead special damages in her statement of claim. When she gave evidence on special damages, learned counsel for the defendant did not object to or challenge the several relatively small quantified items of special damages arising directly from the felling of the rubber trees by the defendant. The plaintiff also said she was earning some \$200 per month tapping the rubber trees on the land; and she stopped tapping after the trees were felled. That was the evidence adduced to prove damages by the plaintiff. The defendant said he felled all the rubber trees on the land at a cost of \$1,800. Neither party had produced any valuation report on the land. The defendant, however, said the price of the land was \$18,000 per acre before the issue of individual subdivisional titles. I therefore, after making some deduction in respect of the bicycle, award special damages to the plaintiff as follows: \$900 for the house, \$200 for the rubber mangles, \$150 for the bicycle, \$110 for the cupboard and table, totalling \$1,360. Damage caused to these items of property was stated in her police report without stating the values. As to general damages in respect of the agreement of January 7, 1977, all relevant factors such as the rubber trees were felled and the plaintiff had stopped tapping must be considered. The rubber trees must be old as the yield per month was not high in terms of income. Both learned counsel inadvertently omitted in their written submissions to submit on the guidelines or principles the court should adopt in the assessment of damages. Whatever measure of damages the court applies, I think its duty is to award damages or compensation as fairly and justly as possible as between the parties based on the evidence before it. The plaintiff said that the rubber trees on about half of the land were felled while the defendant said all the rubber trees on the land (about 5½ acres in area) were felled. I find as a fact that about three acres of rubber trees were felled. She had also lost her monthly income of about \$200. She would not have suffered these losses if the fraudulent misrepresentation had not been made. These losses must be made good. I assess the approximate value of the rubber trees felled at \$2,500 per acre. I therefore think that an award of damages against the defendants in the sum of \$10,000 is fair and reasonable in the circumstances of this case, taking into account virtually the damage caused to the rubber trees and the loss of her small income, and bearing in mind that she will retain possession of the land free from encumbrances at its present enhanced value owing to a rise in price in the real property market.

As regards the three agreements relating to the three sub-lots they must also be rescinded. But as the plaintiff received no benefit thereunder, no compensation or refund need be made by her to the defendant under section 37 of the Specific Relief Act, 1950 (Revised 1974). At the same time the defendant is not obliged to pay her damages as she did not prove she had suffered anything thereunder.

The jurisdiction of the court to order specific performance of a contract is discretionary. In the present case since the plaintiff had proved fraudulent misrepresentation, specific performance cannot be enforced in favour of the defendant under the provisions of section 27(b) of the Specific Relief Act. The defendant should not be allowed to benefit from his misrepresentation. The counterclaim is therefore dismissed with costs.

There will be judgment against the defendant in favour of the plaintiff for the sums of \$1,360 and \$10,000 with costs. Interest on the sum of \$1,360 will run from date of filing suit to date of judgment at 4% per annum and thereafter at 8% per annum till realization. Interest at 8% per annum on the sum of \$10,000 will run from date of judgment to realization. The plaintiff must refund the sum of \$6,500 to the defendant, to be set off against the account of damages payable by him.

I order the rescission of the agreement (D5) and the three agreements (D9, D10 and D12). These four agreements, and issue document of title E.M.R. 1406, and the transfer must be returned to the plaintiff for cancellation within one month from today. I direct the Collector of Land Revenue, District of Port Dickson, to remove the private caveat Volume 6, Folio 61, entered by the defendant on January 24, 1981 under section 417 of the National Land Code.

Order accordingly.

Solicitor: A.K.J'D'Cruz & Co.; Fernandez & Co.

YEAP SEOK PEN v. GOVERNMENT OF STATE OF KELANTAN

[F.C. (Suffian L.P., Lee Hun Hoe C.J. Borneo and
Abdul Hamid F.J.) June 5 & July 3, 1982]
[Kota Bharu — Federal Court Civil Appeal No. 167 of
1981]

*Land Law — Land Acquisition — Declaration that
land needed for a public purpose — Land needed for
Kelantan Foundation — Whether land required for public
purpose — Whether State Government acted mala fide —
Kelantan Foundation Enactment, 1974, s. 19(1) — Land
Acquisition Act, 1960, s. 8(3)*

In this case the Kelantan State Government, the respondent, had published a declaration that the land belonging to the appellant was needed for a public purpose, that is, for the purpose of office and commercial space of the Kelantan foundation. It was contended that the declaration was invalid and ineffective. The learned trial judge dismissed the application of the appellant and he appealed. The

issues on appeal were (a) whether or not the declaration was valid and (b) whether or not the State Government acted *mala fide*, that is, in bad faith when acquiring the property.

Held: (1) in view of the provisions of section 19(1) of the Kelantan Foundation Enactment, 1974, the declaration in this case had effect as if it were a declaration that the property was needed for a public purpose in accordance with the Land Acquisition Act and the declaration was conclusive evidence that the land was needed for the purpose specified in the declaration;

(2) the fact that other properties were available was not enough to prove that the State Government had acted *mala fide* when it acquired the property.

Cases referred to:

- (1) *Wijeysekara v. Festing* [1919] A.C. 646.
- (2) *Syed Omar Alsagoff & Anor. v. State of Johore* [1979] 1 M.L.J. 49, 50.
- (3) *S. Kulasingam & Anor. v. Commissioner of Lands, Federal Territory & Ors.* [1982] 1 M.L.J. 204, 211.
- (4) *Westminster Corporation v. L.N.W. Railway* [1905] A.C. 426, 430, 432.

[The following authorities were also cited in argument; *Galstaun & Anor. v. Attorney-General* [1981] 1 M.L.J. 9; *Musa b. Salleh v. Public Prosecutor* [1973] 1 M.L.J. 167, 169]

FEDERAL COURT.

Mohamed Dzaidin bin Abdullah for the appellant.

Abdul Hamid bin Mohamad, Legal Adviser, Kelantan, for the respondent.

Suffian L.P. (Judgment of the Court read by Abdul Razak J.): The appellant's father ran a goldsmith's business for 45 years in a rented shophouse on lot 715, Jalan To' Hakim in the town of Kota Bharu. In 1979 the landlady Tengku Besar Zabidah binti Tengku Abdul Kadir Kamaruddin after some persuasion agreed to sell it to the appellant. The appellant retained Encik Dzaidin who happens to be Tengku Besar Zabidah's son-in-law as her solicitor to handle the transaction. On October 8, 1979, the parties executed a memorandum of transfer witnessed by Encik Dzaidin.

On March 3, 1980, Encik Dzaidin presented the memorandum and the issue document of title to the Registry of Titles. According to Encik Dzaidin, the transfer should have gone through smoothly, as both the vendor and the appellant are natives of Kelantan and the land is outside a Malay reservation area and therefore there was no need for approval by the Ruler in Council. But, says Encik Dzaidin, the transfer did not go through smoothly, for there was a formal enquiry by the

A Deputy Registrar of Titles, to determine whether or not the appellant was a native of Kelantan. The transfer was not registered until July 26.

But lo and behold! — three months later, on October 23, the Kelantan State Government the respondent ("the State Government") published in the Gazette a declaration in form D ("G.N. 707") under section 8 of the Land Acquisition Act 34 of 1960 ("the Act") saying that this property was needed for the purpose of "ruang pejabat dan perniagaan Yayasan Kelantan" i.e. for the purpose of office and commercial space of the Kelantan Foundation.

There were three issues before the learned trial Judge who decide all of them in favour of the State Government; but before us there remain only two issues.

D *Declaration valid?*

The first issue is whether or not the declaration was valid. Encik Dzaidin submitted that it was not. With respect we are of the opinion that it was valid.

E

The Kelantan Foundation was established by law enacted by the Kelantan State Assembly. The law is the Kelantan Foundation Enactment No. 1 of 1974:

F "to provide for the establishment of a Foundation for the purposes of improving and furthering the progress of educational facilities in the State ... and of encouraging and promoting a Malaysian consciousness therein ..." (long title).

G The Foundation is a statutory body with praiseworthy aims.

And section 19(1) of the Enactment provides:

H "When any immovable property, not being State land, is needed to be acquired by the Board for the purposes of this Enactment, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State, and any declaration required by any such written law that such land is so needed may be made notwithstanding that compensation is to be paid by the Board; and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose in accordance with such written law."

I

In view of the words after the semicolon in the above provision, we have no alternative but to hold that the declaration in G.N. 707 had effect as if it were a declaration that this property was needed for a public purpose in accordance with the Land

Acquisition Act. Subsection (3) of section 8 of the Act provides:

"A declaration in Form D shall be conclusive evidence that all the ... land referred to therein is needed for the purpose specified therein."

We are therefore of the opinion that there is no merit in the appellant's contention on this issue.

Even where there is no such a finality clause, the Privy Council has held in an appeal from Ceylon in *Wijeyesekera v. Festing*⁽¹⁾ that the decision of the Governor-in-Council that land is required for a public purpose is not open to challenge in the courts; but of course that ruling turns on the language of the enactment before Their Lordships.

Mala fides

The second issue is whether or not the State Government acted *mala fide* i.e. in bad faith when acquiring this property.

When considering subsection (3) of section 8 of the Act, the Privy Council in *Syed Omar Alsagoff & Another v. State of Johore*⁽²⁾ said that it was possible to challenge the validity of a section 8 declaration on the ground of bad faith. Viscount Dilhorne said at page 50:

"Section 8(3) ... provides that the Declaration [In Form D] shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a Declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see *Anisminic v. Foreign Compensation Commission* [1969] 2 A.C. 147) or that the purpose stated in the Declaration does not come within section 3, in the absence of bad faith ... this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified."

See also the judgment of this court in *S. Kulasingham & Another v. Commissioner of Lands, Federal Territory & Ors.*⁽³⁾

In an old English case Vaughan Williams L.J. said in the Court of Appeal:

"In my judgment, it is not true to say that the corporation have taken this land which they have taken with the object of using it for the purposes authorized by the Legislature ... You are acting *mala fide* if you are seeking to acquire and acquiring lands for a purpose not authorized by the Act of Parliament."

The above statement of principle was quoted with approval by Lord MacNaghten in the House of

A Lords case of *Westminster Corporation v. L.N.W. Railway*⁽⁴⁾.

The argument on this issue is as follows. This property is one in a row of ten shophouses. Why pick on it when the others have not been acquired? B It was submitted that the real reason was not to use it for the purpose of the Foundation but to prevent it falling into the hands of a non-Malay purchaser even though she is a native of Kelantan. C It was this desire that was responsible for the delay in registering this transfer, or so it was said. Secondly, it was said, and this is undisputed, that as early as November 13, 1978, i.e. two years before the declaration in G.N. 707 the State Government had already given the Foundation a piece of land (lot 235, section 13, Bandar Kota Bharu, 667 depas in area) where the Foundation was to build shophouses and that one of them could surely be used by the Foundation itself and that therefore there was no need for the Government to acquire the appellant's property. Also, it was said that the Kelantan State Economic Development Corporation had started developing an area in Kota Bharu where it was to build 36 units of four-storey shophouses and that the Foundation could easily acquire one of these units for its use. D E

Having given this matter anxious consideration, we have come to the conclusion that on this issue too the appeal fails. We sympathize with the feelings of the appellant: of all the thousands of properties in Kota Bharu why should hers alone, which had been occupied by her family for 45 years and which she had just bought, be picked for acquisition by the Government for the Foundation? F G Also the Foundation could easily build on the land alienated to it or buy or rent one of the properties to be built by the State Economic Development Corporation. But we respectfully agree with the learned trial Judge that the fact that other properties were available is not enough to prove that the State Government had acted *mala fide* when it acquired this property. H

For the above reasons we would dismiss this appeal with costs. The appellant's deposit to be paid to the respondent against taxed costs.

Appeal dismissed.

Solicitors: *Dzaidin & Co.*